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DEPT FOR EEB/IFD/OIA
DEPT FOR EAP/J
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UDSOC FOR ITA
DEPT PASS USTR FOR WCUTLER, MBEEMAN

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TAGS: EINV ECON ELAB OPIC KTDB USTR JA
SUBJECT: INVESTMENT CLIMATE STATEMENT - JAPAN

REF: 09 STATE 124006

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A.1. OVERVIEW OF FOREIGN INVESTMENT CLIMATE

¶2. Japan is the world's second largest economy, the United States' fourth largest trading partner, and an important destination for U.S. foreign direct investment (FDI). The Government of Japan explicitly promotes inward FDI and has established formal programs to attract it. Since 2001, Japan's stock of FDI, as a percentage of gross domestic product (GDP), grew from less than one percent to more than 3.5 percent at the end of 2009. Despite experiencing one of the worst recessions since the Second World War and the first transfer of power to the political opposition in over fifty years, Japan continued to attract positive FDI inflows in 2009, albeit at a slower pace than before the downturn.

¶3. In the third quarter of CY 2008, Japan's economy entered recession for the first time since 2002. The global economy's contraction in the wake of the financial turmoil of 2008 adversely impacted Japan's economy, hitting Japan's export-oriented industries such as automobiles and consumer electronics, with particular force. In early CY 2009, Japanese GDP contracted at a double-digit rate. While conditions ameliorated as global demand rebounded later in the

year, the government's economic forecast for FY 2009 (April 2009 to March 2010) projects nominal GDP will be negative 4.3 percent, which amounts to a negative growth rate of 2.6 percent in real terms, and an unemployment rate of 5.4 percent.

¶4. The economy featured prominently in the general elections held August 30, 2009, in which the opposition Democratic Party of Japan (DPJ) won a majority in the lower house of the National Diet, thus ending over 50 years of nearly uninterrupted Liberal Democratic Party (LDP) rule. While the DPJ-led government that assumed power in September had not reversed any measure to encourage inward FDI, as of December 2009 it had not publicly reaffirmed the previous governments' commitment to welcoming FDI either.

¶5. The Ministry of Economy Trade and Industry (METI) and the quasi-governmental Japan External Trade Organization (JETRO) are the lead agencies responsible for assisting foreign firms wishing to invest in Japan. Many prefectural and city governments also have active programs to attract foreign investors, but they lack many of the financial tools U.S. states use to attract investment.

¶6. Risks associated with investment in many other countries, such as expropriation and nationalization, are not of concern in Japan. The Japanese Government does not impose export balancing requirements or other trade-related FDI measures on firms seeking to invest in Japan.

¶7. Japan ranked 17 on Transparency International's Corruption Perceptions Index in 2009, with a score of 7.7 based on six surveys. The World Bank ranked Japan number 15 on its Ease of Doing Business 2010 report, covering the period from June 2008 through May 2009.

The 2009 Index of Economic Freedom compiled by the Heritage Foundation ranked Japan number 19, with a score of 72.8 or mostly free.

¶8. In addition to business considerations relevant to investing in a mature economy with an aging population, foreign investors seeking a presence in the Japanese market, or to acquire a Japanese firm through corporate takeover, face a number of unique challenges, many of which relate more to prevailing business practices rather than government regulations. The most notable are:
-- A highly insular and consensual business culture that is resistant to hostile mergers and acquisitions (M&A) and prefers to do business, especially M&A transactions, with familiar corporate partners;
-- A lack of independent directors on most company boards; Cross-shareholding networks among listed corporations in which shares are held for non-economic reasons resulting in a minimal float of available common stock relative to total capital;
-- Exclusive supplier networks and alliances between business groups that can restrict competition from foreign firms and domestic newcomers,
-- Cultural and linguistic challenges; and
-- Labor practices that inhibit labor mobility, suppress productivity, and negatively affect skill development.

¶9. Since 2001, the U.S. and Japanese governments have discussed all these issues in working groups under the Regulatory Reform and Competition Policy Initiative, and the Investment Initiative, as part of the U.S.-Japan Economic Partnership for Growth. While recognizing the progress made in some areas under this structure, as of December 2009 both the U.S. and Japanese governments were considering how to recalibrate a U.S.-Japan bilateral economic dialogue to best address these issues and take into account new needs arising from continuing economic turmoil, bilateral cooperation in addressing global issues such as climate change, and hosting the Asia-Pacific Economic Cooperation (APEC) forum in 2010 (Japan) and 2011 (the United States).

¶10. Future bilateral engagement will occur against a changed political environment in Japan. Whereas the LDP was closely affiliated with the Japanese business community, the DPJ and its coalition partners - the Social Democratic Party of Japan and the People's New Party - draw support from other constituencies as well,

including trade unions. While investment issues did not figure directly in the 2009 elections, the DPJ's August 2009 campaign platform criticized structural reforms championed by former Prime Minister Koizumi and pledged to reduce the influence of the bureaucracy in policy-making. It also promised to shift government spending away from public works projects toward programs benefitting consumers.

¶11. Structural reforms, revisions to Japan's legal code, and pro-active Japanese government policies to promote FDI and corporate restructuring led to a boom in merger and acquisition (M&A) activity after 2001. The annual number of M&A transactions in Japan increased dramatically during the ensuing decade, from approximately 800 in 1998 to almost 2,700 in 2007, according to RECOF, a Tokyo-based M&A consultancy. Although down from the peak reached during the 2006-2007 period, M&A activity continued through 2009, numbering about 1,954 transactions, a 19 percent decline from the previous year, according to RECOF estimates. Measured by value, M&A activity declined 43 percent in 2009, to about 7 trillion yen. The majority of these mergers were domestic transactions, but transactions involving foreign counterparts also increased. The number of takeover bids (TOB) in Japan exceeded 100 for the first time in 2007. TOBs numbered 76 in 2008 and 78 in 2009, according to RECOF. The total value of M&A deals involving Japanese companies in CY 2009 was JPY 7.24 trillion, down 42.2 percent from CY 2008. At the same time, Japanese M&A directed at foreign companies in CY 2009 amounted to JPY 2.79 trillion, accounting for 38.6 percent of the total and down 62.4 percent from CY 2008, according to RECOF. Although change is slow, many Japanese corporate leaders now appreciate the contribution M&A can make to increasing corporate value.

¶12. While inflows from the developed nations in Europe and the United States held steady or declined during 2008, inflows from Asia and Central and South America increased during the same period (Tables 2-3). Despite the increase in FDI since the mid-1990s, Japan continues to have the lowest foreign direct investment as a proportion of GDP ratio of any major OECD member. On a yen basis,

FDI stock in Japan as of December 2008 was JPY 18.46 trillion, (3.6 percent of GDP), according to Ministry of Finance (MOF) statistics.

¶13. Meanwhile, Japan continues to run a significant imbalance between inward and outward FDI (see Table 1b). Japan's outward foreign direct investment rose from USD 50.1 billion in 2006 to USD 73.4 billion in 2007 and USD 130.8 billion in 2008 (see Table 5). Japanese companies' large cash holdings combined with low global equity values and the strengthening of the yen supported increased outbound FDI activity. Notwithstanding the imbalance between inward and outward FDI, outward FDI as a percentage of GDP remains lower for Japan than for other major OECD members.

Legal Reform Facilitates M&A Activity

¶14. In recent years, reforms in the financial, communications, and distribution sectors have encouraged foreign investment in these industries. The 2005 Companies Act, an amended bankruptcy law, and the 2007 Financial Instruments and Exchange Law helped increase the attractiveness of Japan as a destination for FDI.

¶15. The most significant legislative change was the substantial revision of Japan's corporate-related law. The changes enacted in 2005 significantly expanded the types of corporate structures available in Japan as well as the variety of M&A transactions available for corporate consolidation and restructuring. A foreign firm, for the first time, may now use its stock as consideration in a cross-border M&A transaction by means of a procedure known as a triangular merger, as long as the foreign acquirer has an existing Japanese subsidiary with which to merge the target company.

¶16. Unfortunately, the tax regulations that govern triangular mergers contain strict conditions regarding business viability and business relevance between the acquiring subsidiary and the target Japanese firm for the transaction to be granted tax deferral of capital gains. As a result, the procedure has not attracted significant new investment flows. As of December 2009, only one

major foreign investor has used the triangular merger provisions of the Companies Act to complete the purchase of a Japanese firm and, in that case, the foreign acquirer already had a significant existing Japanese operation into which it could merge its new Japanese acquisition. The U.S. government has repeatedly raised the issue of effective tax deferral for M&A transactions in bilateral discussions, and the Japanese Government itself has acknowledged the issue as something requiring further study and resolution.

¶17. The 2007 Financial Instruments and Exchange Law establishes a flexible regulatory system for financial markets and applies a uniform set of rules for similar financial instruments. At the same time, the law allows brokers and financial advisors to treat investors differently, depending on whether they are deemed "professional" investors (assumed to be capable of more sophisticated investment strategies and requiring less protection and disclosure) or "general", i.e., retail investors. Brokerage firms must provide the latter with detailed disclosure of risks related to different types of financial products at the time of offering.

Limited Sector-specific Investment Restrictions Remain
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¶18. Japan has gradually eliminated most formal restrictions governing FDI. One important restriction remaining in law limits foreign ownership in Japan's former land-line monopoly telephone operator, Nippon Telegraph and Telephone (NTT), to 33 percent. Japan's Radio and Broadcasting Law also limits foreign investment in broadcasters to 20 percent, or 33 percent for broadcasters categorized as facility-supplying. Foreign ownership of Japanese companies invested in terrestrial broadcasters will be counted against these limits. These limits do not apply to communication satellite facility owners, program suppliers or cable television operators. In 2009, the Experts Advisory Council on Airport Infrastructure proposed a bill that would limit non-governmental investment at Narita International Airport to 20 percent, but the National Diet did not vote on the bill. The Ministry of Land, Infrastructure, Transport and Tourism (MLIT) is expected to begin new discussions in 2010 about whether any investment limitation is appropriate at Narita. Regarding Haneda Airport, the government has

decided not to discuss any proposed investment limitation for the time being.

¶19. The Foreign Exchange and Foreign Trade Act governs investment in sectors deemed to have national sovereignty or national security implications. In most cases, foreign investors need only report transactions to the Bank of Japan within 15 days of acquiring more than 10 percent of the shares in a publicly listed company or any shares of a closely held company. However, if a foreign investor wants to acquire over 10 percent of the shares of a listed company in certain designated sectors, it must provide prior notification (and thus obtain specific approval) of the intended transaction to the Ministry of Finance and the ministry that regulates the specific industry. Designated sectors include agriculture, aerospace, forestry, petroleum, electric/gas/water utilities, telecommunications, and leather manufacturing. Amendments to the prior notification and reporting requirements under the law, effective in 2009, reduced the administrative burden on foreign investors so as to facilitate inward investment.

¶20. Several sections of the Japanese Anti-Monopoly Act (AMA) are relevant to FDI. Chapter Four of the AMA includes extensive anti-trust provisions pertaining to international contract notification (section 6), shareholdings (sections 10 and 14), interlocking corporate directorates (section 13), mergers (section 15), and acquisitions (section 16). The stated purpose of these provisions is to restrict shareholding, management, joint venture, and M&A activities that may constitute unreasonable restraints on competition or involve unfair trade practices. The Japanese Government has emphasized these provisions are not intended to discriminate against foreign companies or discourage FDI.

¶21. Amendments to the AMA, effective January 1, 2010, improve the

climate for M&A by clarifying the pre-merger review process and significantly raising the thresholds for pre-merger reporting to antitrust authorities. The amendments make share acquisitions subject to the same pre-merger notification rules as mergers and asset acquisitions. The thresholds for notification will rise from JPY 10 billion to JPY 20 billion for the acquiring corporation and from JPY 1 billion to JPY 5 billion for the acquired corporation. They also expand the scope of exemptions from notification.

Limitations on Facility Development and Availability of Investment Real Estate
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¶22. Aiming to increase the liquidity of Japanese real estate markets, the government in recent years has progressively lowered capital gains, registration, and license taxes on real estate. It also reduced inheritance and gift taxes to promote intergenerational transfer of land and other real assets. More changes in tax policy and accounting standards could increase real estate liquidity, but the market remains hampered by a shortage of legal and accounting professionals and by a relative lack of information on prices and income flows.

¶23. Japan continues restricting development of retail and commercial facilities in some areas to prevent excessive concentration of development in the environs of Tokyo, Osaka, and Nagoya, and to preserve agricultural land. Conversely, many prefectural governments outside the largest urban areas make available property for development in public industrial parks. Japan's zoning laws give local officials and residents considerable discretion to screen almost all aspects of a proposed building. In some areas, these factors have hindered real estate development projects and led to construction delays and higher building costs in particular, in cases where proposed new retail development would affect existing businesses.

¶24. Japanese law permits marketing of real estate investment trusts (REITs) and mutual funds that invest in property rights. As of December 2009, there are 37 REITs listed on the Tokyo Stock Exchange (TSE), three fewer than a year earlier.

¶25. Japan's real estate sector experienced painful contraction as a result of the credit crunch beginning in 2008 and the deterioration of the economy overall in the first half of 2009. Several developers went bankrupt and others were forced into emergency restructuring as regular short-term financing evaporated. As of

December 2009, the sector continued to face adverse market trends.

Corporate Tax Treatment

¶26. Local branches of foreign firms are generally taxed only on corporate income derived within Japan, whereas domestic Japanese corporations are taxed on their worldwide income. Calculations of taxable income and allowable deductions, and payments of the consumption tax (sales tax) for foreign investors are otherwise the same as those for domestic companies. Corporate tax rules classify corporations as either foreign or domestic depending on the location of their "registered office," which may be the same as -- or a proxy for -- the place of incorporation.

¶27. The current U.S.-Japan bilateral tax treaty allows Japan to tax the business profits of a U.S. resident only to the extent those profits are attributable to a "permanent establishment" in Japan. It also provides measures to mitigate double taxation. This "permanent establishment" provision combined with Japan's high 40 percent corporate tax rate serves to encourage foreign and investment funds to keep their trading and investment operations off-shore.

¶28. Cross-border dividends on listed stock are not subject to source country withholding tax if the parent company owns 50 percent or more of the foreign subsidiary. Interest on financial transactions payable to a nonresident and royalties paid to a

foreign licensor are no longer subject to source country withholding tax. A special tax measure allows designated inward investors to carry over certain losses for tax purposes for ten years rather than for the normal five years. The government has also announced plans to exempt foreign investors from paying taxes on interest income (currently 15 percent) on corporate bonds, fiscal loan and investment program bonds, and those issued by the Japan Finance Organization for Municipalities, starting in June 2010.

¶29. The option of consolidated taxation is available to corporations. The purpose of these rules is to facilitate investment and corporate restructuring, because losses usually expected from a new venture or recently acquired subsidiary can be charged against the profits of the parent firm or holding company.

Investment Incentives

¶30. Since 2001, the Japanese Government has sought to revitalize the country's economy, in part, by increasing inward FDI. Recognizing the benefits for Japan of increased foreign investment, the government sought to double Japan's stock of FDI, which it did by 2006.
In June that year, the government accepted the Japan Investment Council recommendation to establish a national goal of increasing Japan's stock of FDI to the equivalent of five percent of the country's GDP by FY2010 (March 2011.)

¶31. Following several controversial foreign investment cases, the Cabinet Office appointed an ad-hoc Experts Committee on FDI Promotion in January 2008. In May that year, the Experts Committee recommended that the government: (1) review and improve Japan's rules for M&A; (2) undertake a comprehensive examination of national security-related FDI regulations; (3) establish priority sectors for FDI that that will have a positive impact on the Japanese economy and quality of life; (4) reduce business costs, including by lowering corporate tax rates, and improve regulatory transparency; and (5) develop a strategic plan to spur regional economies' revitalization through the use and attraction of foreign capital. These five recommendations served as the basis for the government's "Revised Program for Acceleration of Foreign Direct Investment in Japan" of December 2008. The DPJ-led government released a preliminary outline of its economic growth strategy in December
¶2009. While the outline summary did not feature increasing FDI, as the time of its release the government had just begun to draft substantive policy recommendations (due in May 2010).

¶32. JETRO operates six Invest Japan Business Support Centers in major urban areas to provide investment-related information and "one-stop" support services to foreign companies interested in investing in Japan. (More detailed information is available at

http://www.jetro.go.jp/en/invest.) Most national level ministries also have information desks to help guide potential investors in navigating Japanese Government administrative procedures.

¶33. Many city or regional governments work to attract foreign capital through outreach to prospective foreign investors, business start-up support services, and limited financial incentives. JETRO supports local government investment promotion efforts. Detailed information on local and regional FDI promotion programs is available in English on the JETRO website.

A.2. CONVERSION AND TRANSFER POLICIES

¶34. Generally, all foreign exchange transactions to and from Japan -- including transfers of profits and dividends, interest, royalties and fees, repatriation of capital, and repayment of principal -- are freely permitted. Japan maintains an ex-post facto notification system for foreign exchange transactions that prohibits specified transactions, including certain foreign direct investments (e.g., from countries under international sanctions) or others that are listed in the appendix of the Foreign Exchange and Foreign Trade Control Law.
¶35. Japan is an active partner in the struggle against terrorist

financing. In coordination with other OECD members, Japan has strengthened due-diligence requirements for financial institutions, and has had a "Know Your Customer" law since 2002. Customers wishing to make cash transfers exceeding JPY 100,000 (USD 1,100) must do so through bank clerks, not ATMs, and must present photo identification.

A.3. EXPROPRIATION AND COMPENSATION

¶36. In the post-war period, the Japanese Government has not expropriated or nationalized any enterprises, with the exception of the 1998 nationalization of two large Japanese capital-deficient banks and the 2002 nationalization of two failed Japanese regional banks as part of the government's efforts to clean up the banking system after its near collapse in 1998. Expropriation or nationalization of foreign investments is extremely unlikely.

A.4. DISPUTE SETTLEMENT

¶37. There have been no major bilateral investment disputes since
¶1990. Nor are there any outstanding expropriation or nationalization cases in Japan. There have been no cases of international binding arbitration of investment disputes between foreign investors and Japan's Government since 1952. Japan is a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards. Nevertheless, Japan is considered an inhospitable forum for international commercial arbitration.

¶38. There are no legal restrictions on foreign investors' access to Japanese lawyers and reforms in the legal services sector and the judicial system have increased the ability of foreign investors to obtain international legal advice related to their investments in Japan. Japan does, however, retain certain restrictions on the ability of foreign lawyers to provide international legal services in Japan in an efficient manner. Only individuals who have passed the Japanese Bar Examination and qualified as Japanese lawyers (bengoshi) may practice Japanese law. However, under Japan's Foreign Legal Practitioner system foreign qualified lawyers may establish Japanese/foreign joint legal enterprises (gaikokuho kyodo jigyo) and provide legal advice and integrated legal services on matters within the competence of its members. Foreign lawyers qualified under Japanese law (gaiben), may provide advice on international legal matters. Gaiben and bengoshi in joint enterprises can adopt a single law firm name of their choice and may determine the profit allocation among them freely and without restriction. However, foreign lawyers are unable to form professional corporations in the same manner as Japanese lawyers and are prohibited from opening branch offices in Japan. Gaiben may hire Japanese lawyers to work directly with them or in a joint legal enterprise or in a Foreign Japanese Joint Legal Office (gaikokuho-jimu-bengoshi jimusho) composed of multiple gaiben. The Japanese government has adopted a long term goal of increasing the number of legal professionals who pass the Bar Examination to 3,000 per year by 2010. The Ministry of Justice Foreign Lawyers Study Group considered possible amendments to the law in 2009; release of

its final report is expected in 2010.

¶39. Japan's civil courts enforce property and contractual rights and do not discriminate against foreign investors. Japanese courts, like those in other countries, operate rather slowly and experience has shown them sometimes ill-suited for litigation of investment and business disputes. Japanese courts lack powers to compel witnesses to testify or a party to comply with an injunction. Timely temporary restraining orders and preliminary injunctions are difficult to obtain. Filing fees are based on the amount of the claim, rather than a flat fee. Lawyers usually require large up-front payments from their clients before filing a lawsuit, with a modest contingency fee, if any, at the conclusion of litigation. Contingency fees familiar in the U.S. are relatively uncommon. A losing party can delay execution of a judgment by appealing. In appeals to higher level courts, additional witnesses and other evidence may be allowed.

¶40. Japan's Alternative Dispute Resolution (ADR) law provides a legal framework for arbitration, including international commercial arbitration. Foreign lawyers qualified under Japanese law can represent parties in ADR proceedings taking place in Japan in which one of the parties is foreign or foreign law is applicable, at least to the extent such representation is not inconsistent with Japanese law. The United States continues to urge Japan to promote alternative dispute resolution mechanisms by ensuring that gaiben and non-lawyer experts can act as neutrals in international arbitration or other international ADR proceedings in Japan, in whole or in part, regardless of the governing law or matter in dispute.

¶41. Courts have the power to encourage mediated settlements and there is a supervised mediation system. However, this process is often time-consuming and judges transfer frequently, so continuity is often lost. As a result, it is common for companies to settle cases out of court.

A.5. PERFORMANCE REQUIREMENTS AND INCENTIVES

¶42. Japan does not maintain performance requirements or requirements for local management participation or local control in joint ventures.

A.6. RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

¶43. Foreign and domestic private enterprises have the right to establish and own business enterprises and engage in all forms of remunerative activity.

¶44. However, the 2005 Companies Act includes a provision -- Article 821 -- which creates uncertainty among foreign corporations that conduct their primary business in the Japanese market through a branch company. As written, Article 821 appears to prohibit branches of foreign corporations from engaging in transactions in Japan "on a continuous basis." The Japanese Diet subsequently issued a clarification of the legislative intent of Article 821 that makes clear the provision should not apply to the activities of legitimate entities. However, some legal uncertainty remains, particularly with respect to possible private litigation against directors and officers of affected firms. The U.S. Government has urged that Japan revoke Article 821 or more formally clarify its meaning. The Japanese government has undertaken to ensure Article 821 will not adversely affect the operations of foreign companies duly registered in Japan and conducting business in a lawful manner.

A.7. PROTECTION OF PROPERTY RIGHTS

¶45. In general, Japan maintains a strong intellectual property rights (IPR) regime, but there are costs and procedures of which prospective investors should be aware. Companies doing business in Japan are encouraged to be clear about all rights and obligations with respect to IPR in any trading or licensing agreements. Explicit arrangements and clear understanding between parties will help to avert problems resulting from differences in culture, markets conditions, legal procedures, or business practices.

¶46. Registering Patents, Trademarks, Utility Models and Designs: The IPR rights holder must register patents and trademarks in order

to ensure protection in Japan. Filing the necessary applications requires hiring a Japanese lawyer or patent practitioner (benrishi) registered in Japan to pursue the patent or trademark application. A U.S. patent or trademark attorney may provide informal advice, but is not able to perform some required functions.

¶47. Patent and trademark procedures in Japan have historically been costly and time-consuming. There have also been complaints about the weaknesses of Japanese enforcement and legal redress, for example, that judges are not adequately trained or that court procedures do not adequately protect business-confidential information required to file a case. Japan's government has revised the law and continues to take steps to address these concerns and it

is becoming easier and cheaper to obtain patent and trademark protection. Procedures have been simplified, fees cut, and judges are receiving more training and are being assigned to specialized IPR courts. Courts have strengthened rules to protect sensitive information and the government has established criminal penalties for inappropriate use of sensitive information used in court or administrative proceedings.

¶48. Prompt filing of patent applications is very important. Printed publication of a description of the invention anywhere in the world, or knowledge or use of the invention in Japan, prior to the filing date of the Japanese application, could preclude the granting of a patent. Japan grants patents on a first-to-file basis. It accepts initial filings in English (to be followed by a Japanese translation), but companies should be careful as translation errors can have significant negative consequences. Unlike the United States, where examination of an application is automatic, in Japan an applicant must request examination of a patent application within three years of filing.

¶49. The Japanese Patent Office (JPO) publishes patent applications 18 months after filing, and if it finds no impediment to granting a patent, publishes the revised application a second time before the patent is granted. The patent is valid for 20 years from the date of filing. Currently, the law allows parties to contest the terms of a patent after issuance (for up to six months), rather than prior to registration as was the previous practice.

¶50. Patent Prosecution Highway: The Patent Prosecution Highway (PPH) is a noteworthy development for U.S. firms seeking patent protection in Japan. Becoming operational January 4, 2008, after an 18-month pilot program, the PPH allows filing of streamlined applications for inventions determined to be patentable in other participating countries and is expected to reduce the average processing time. The program, which is based on information sharing between national patent offices and standardized application and examination procedures, should reduce costs and encourage greater utilization of the patent system.

¶51. Trademarks, Utility Models, and Designs: Japan's Trademark Law protects trademarks and service marks and, like patent protection, requires registration by means of an application filed by a resident agent (lawyer or patent agent). As the process takes time, firms planning on doing business in Japan should file for trademark registration as early as practicable. Japan is a signatory of the Madrid Protocol. Trademarks registered at the WIPO Secretariat are protected among all member countries.

¶52. Japan's Utility Model Law allows registration of utility models (a form of minor patent) and provides a 10-year term of protection. Under a separate design law, effective April 2007, protection is available for designs for a 20-year term from the date of registration.

¶53. Semiconductor chip design layouts are protected for 10 years under a special law, if registered with the Japanese "Industrial Property Cooperation Center" -- a government-established public corporation.

¶54. Unfair Competition and Trade Secrets: The Unfair Competition Prevention Law provides for protecting trademarks prior to registration. The owner of the mark must demonstrate that the mark is well known in Japan and that consumers will be confused by the use of an identical or similar mark by an unauthorized user. The law also provides some protection for trade secrets, such as know-how, customer lists, sales manuals, and experimental data.

Recent amendments to the law provide for injunctions against wrongful use, acquisition or disclosure of a trade secret by any person who knew, or should have known, the information in question was misappropriated. Criminal penalties were also strengthened. However, Japanese judicial processes make it difficult to file claims without losing the trade secrets.

¶55. Copyrights: In conformity with international agreement, Japan

maintains a non-formality principle for copyright registration -- i.e., registration is not a pre-condition to the establishment of copyright protection. However, the Cultural Affairs Agency maintains a registry for such matters as date of first publication, date of creation of program works, and assignment of copyright. United States copyrights are recognized in Japan by international treaty.

A.8. TRANSPARENCY OF THE REGULATORY SYSTEM

¶56. The Japanese economy continues to suffer from over-regulation, which can restrain potential economic growth, raise the cost of doing business, restrict competition, and impede investment. It also increases the costs for Japanese businesses and consumers. Over-regulation underlies many market access and competitive problems faced by U.S. companies in Japan.

¶57. The United States has for several years called on Japan to make improvements in its regulatory system to support domestic reform efforts and ensure universal access to government information and the policymaking process.

¶58. The Japanese government has taken steps to improve its public comment procedures, but these improvements are not uniform throughout the government. The United States continues to urge Japan to apply consistently high transparency standards, including by issuing new rules to ensure transparency and access for stakeholders in the rulemaking process; by allowing effective public input into the regulatory process; and by giving due consideration to comments received. The United States also has asked Japan to lengthen its public comment period and to require ministries and agencies to issue all new regulations or statements of policy in writing or provide applicable interpretations to interested stakeholders in plain language.

¶59. In the financial sector, the Financial Services Agency has made efforts to expand the body of published written interpretations of Japan's financial laws, including improvements to the "no-action letter" system, and improved outreach to the private sector regarding these changes.

¶60. The United States has engaged in bilateral working-level discussions since 2002 in an effort to encourage the Japanese Government to promote deregulation, improve competition policy, and administrative reforms that could contribute to sustainable economic growth, increase imports and foreign direct investment into Japan. The National Trade Estimate Report on Foreign Trade Barriers, issued by the Office of the U.S. Trade Representative (USTR), contains a detailed description of Japan's regulatory regime as it affects foreign exporters and investors

A.9. EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT

¶61. Japan maintains no formal restrictions on inward portfolio investment and foreign capital plays an important role in Japan's financial markets. However, many company managers and directors resist the actions of activist shareholders, especially foreign private equity funds, potentially limiting the attractiveness of Japan's equity market to large-scale foreign portfolio investment. Nevertheless, some firms have taken steps to facilitate the exercise of shareholder rights by foreign investors, including the use of electronic proxy voting. The Tokyo Stock Exchange (TSE) maintains an Electronic Voting Platform for Foreign and Institutional Investors in which more than 347 listed companies participate as of December 2009. All holdings of TSE-listed stocks are required to transfer paper stock certificates into electronic form.
¶62. The Tokyo Stock Exchange has stepped up efforts to attract investors. Following receipt of a license from the Financial Services Agency (FSA) on May 29, 2009, the TSE launched Tokyo AIM, a new equity market for venture firms, in cooperation with the London Stock Exchange. It also prepared to introduce a faster trading

system in January 2010. Japan's stock exchanges face competitive pressures, however. A record 163 firms delisted from the TSE in 2009, according to Teikoku Databank. Other major stock exchanges in

Asia -- including Taiwan, Hong Kong, Seoul, and Singapore -- are stepping up efforts to attract stock listings by Japanese companies.

¶63. Environment for Mergers and Acquisitions: Japan's aversion to M&A is receding gradually, accelerated by the unwinding of previously extensive corporate cross-shareholding networks between banks and corporations in the same business family, improved accounting standards, and government mandates that began in the late 1990s that require banks divest cross-holdings above a set threshold. The majority of M&A over the past decade has been driven by the need to consolidate and restructure mature industries or in response to severe financial difficulties.

¶64. Friendly transfer of wholly-owned or majority-owned subsidiaries remains by far the more common form of M&A in Japan. Similarly, unlisted owner-operated firms -- which traditionally would only sell out as a last resort before bankruptcy -- are becoming more amenable to acquisition, including by foreign investors. Nevertheless, there remains a strong preference among Japanese managers and directors for M&A that preserves the independence of the target company. If companies are forced to seek an acquirer, they are often most comfortable merging with a firm with which they have a pre-existing business relationship.

¶65. Since the Companies Act, which took effect in 2006, expanded the types of M&A structure available in the Japanese market, many companies have adopted defensive measures against hostile takeovers. The most common of these are "advance warning systems" or "poison pill"-type rights distribution plans. In response to the rapid adoption of such plans and the concerns of many foreign investors, including investment funds, that companies were using takeover defenses to entrench existing management, METI in early 2008 convened the Corporate Value Study Group (CVSG) to clarify the purpose of takeover defense measures and principles governing their use. The CVSG's final report issued July 2008 explicitly recognizes the "positive effects" of hostile takeovers and emphasizes defensive measures should not be used to protect managements' own interests at the expense of shareholders, nor should they deprive shareholders of the right to make their own determination whether to accept a takeover bid.

¶66. The number of "poison pill" and related proposals decreased markedly in 2009, down to about 100 from more than 200 in 2008, according to the consultancy Glass Lewis. While the financial crisis reduced the threat of hostile takeovers by reducing capital available, this decline also flowed from intensified criticism of such measures from investors and growing recognition by management that takeover defense plans are not in the interests of either the firm or its shareholders. Nevertheless, a number of technical factors continue to limit greater entry into the Japanese market through M&A. These factors include tax policy, a lack of independent directors, weak disclosure practices, and a relative shortage of M&A infrastructure in the form of specialists skilled in making matches and structuring M&A deals.

¶67. Company Law Revisions: The extensive revision of Japan's Company Law (Commercial Code) in 2005-06 significantly expanded the flexibility of corporate capital structures and increased the types of governance structures available to Japanese firms. The new law, which came fully into force in May 2007, revised and combined Part II of the previous Commercial Code with existing laws governing limited liability companies (yugen gaisha) and audits. The law also introduced changes to facilitate start-ups and make corporate structures more flexible, including elimination of minimum capital requirements for joint-stock companies (kabushiki kaisha). It merged a number of different corporate structures and created a new structure (godo kaisha) modeled on the U.S.-style limited liability company.

¶68. The Companies Act also permits formation of corporate holding companies in Japan for the first time since World War II. This step has facilitated use of domestic stock swaps in corporate restructuring, through which one party becomes a wholly-owned subsidiary of the other. Japan's tax law now provides special tax treatment and deferral of taxes on such stock-swap transactions at

the time of exchange and transfer. As of May 2007, foreign equities can be used as consideration in triangular merger transactions targeting Japanese firms. However, to take advantage of the new rules, the foreign acquirer must legally establish a Japanese subsidiary firm to act as the counterpart to the stock exchange/transfer.

¶69. Changes in Corporate Governance: Under the new Companies Act and the Industrial Revitalization Law, publicly traded companies have the option of adopting a U.S.-style corporate governance system instead of the traditional Japanese statutory auditor (kansayaku) system of corporate governance. This new system requires the appointment of executive officers and the establishment of a board committee system in which at least the audit, nomination, and compensation committees are composed of a majority of outside directors. Initially available only under the Industrial Revitalization Law and effectively limited to distressed companies, the new Companies Act makes these options available to all listed companies. Companies also can use the Internet or other electronic means to provide notices of annual general meetings or similar communication with shareholders. Where available, shareholders may exercise voting rights electronically and companies are permitted to make required disclosures of balance sheet and other financial information in an electronic format.

¶70. Reflecting growing concern within Japan that weaknesses in existing systems of corporate governance are a disincentive for foreign investors, several government agencies and non-government organizations have studied the matter and issued recommendations. METI inaugurated a Corporate Governance Study Group (CGSG), with business-community representation, which issued "The Corporate Governance Study Group Report" on June 17, 2009. Significantly, the CGSG was the first government-linked body to set out a formal definition of "independent" director or statutory auditors. Japan's Companies Act only requires boards to have "outside" directors, defined as an individual who is not an executive or employee of the company itself, or of the company's subsidiaries. The Financial Services Agency also convened the Financial System Council (FSC) Study Group, which issued its report, "Toward Stronger Corporate Governance of Publicly Listed Companies," the same month.

¶71. On the central question of appointing independent members on corporate boards, the Corporate Governance Study Group convened by METI stopped short of calling for changing the existing "outsider" requirements of board composition with "independence" requirements. The CGSG confirmed the need for some independent board representation but also noted that non-independent board members can still make valuable contributions to a firm. Positing a potential tradeoff between increased independence and the efficacy of management, the report recommended that each firm should be allowed to adopt the most effective structure in terms of its business. It urged the stock exchange to make rules calling for firms to name one independent director or statutory auditor on each board. It also put forward a model of governance where the firm would appoint at least one "outside" director and disclose its corporate governance system or explain how its model of corporate governance will be effective where no outside director is appointed.

¶72. Highlighting the critical role of shareholders in ensuring effective corporate governance, the FSC report echoed the CGSG recommendations on independent directors. It urged the government to consider ways to require listed companies to disclose the details of any existing relationship between individual directors and the company, and to provide the company's views on the level of independence of individual directors. It also called for efforts to strengthen the functions of statutory auditors within companies, and to provide better training and resources so that auditors can more effectively carry out their oversight functions.

¶73. The Tokyo Stock exchange implemented new restrictions on private placements to protect the interests of shareholders on August 24, 2009, and published its Listing System Improvement Action Plan on September 29, 2009. The plan sets out steps to enhance corporate governance, improve disclosure, and improve the governance of group companies. On December 24 the TSE released its revised Principles of Corporate Governance for Listed Companies, the first

revision since their formulation in 2004. Points newly added address issues of enhancing corporate governance through enterprise groups, strengthening of statutory auditors' functions, and suitable models

of corporate governance. As of December 2009, the TSE was still considering rules regarding the independence of directors.

¶74. Cross-shareholdings and M&A: Potential foreign investors in Japan frequently point out that cross-shareholding between Japanese listed companies greatly complicates market-based M&A activity and reduces the potential impact of shareholder-based corporate governance. Such cross-shareholding practices allow senior management to put a priority on internal loyalties over shareholder returns and can lead to premature rejection of M&A bids. Traditionally, a company maintained a close relationship with a large-scale commercial bank, known as a "main bank", usually part of the same loose corporate grouping. In return for holding a bloc of the company's shares, the bank provided both regular financing and emergency support if the company ran into financial difficulties. This "main bank" system largely dissolved in the late 1990s as Japan's banking system came close to collapse.

¶75. With the recovery of the Japanese economy at mid-decade, however, some company boards began rebuilding cross-shareholding networks, this time with suppliers or nominal competitors rather than a commercial bank. While many boards saw such linkages as an effective means of defense against hostile takeovers, the sharp decline in Japanese stock prices in the autumn of 2008 highlighted the risks of this strategy. According to Daiwa Institute of Research, the proportion of stocks owned in cross-shareholding deals among Japanese firms fell slightly in FY 2008 to 8.2 percent. Subsequent declines will be necessary to conclude that this change represents a trend, and it remains unclear whether the introduction of International Financial Reporting Standards (IFRS) will lead to further declines in cross-shareholdings.

¶76. Accounting and Disclosure: Implementation of so-called "Big Bang" reforms since 1998 has significantly improved Japan's accounting standards. Consolidated accounting has been mandatory since 1999 and "effective control and influence" standards have been introduced in place of conventional holding standards, expanding the range of subsidiary and affiliated companies included for the settlement of accounts. Consolidated disclosure of contingent liabilities, such as guarantees, is also mandatory. All marketable financial assets held for trading purposes, including cross-shareholdings and other long-term securities holdings, are recorded at market value.

¶77. Companies are required to disclose unfunded pension liabilities by valuing pension assets and liabilities at fair value. Fixed asset impairment accounting, in effect since 2005, requires firms to record losses if the recoverable value of property, plant, or equipment is significantly less than book value.

¶78. The greater focus on consolidated results and mark-to-market accounting had a significant effect in encouraging the unwinding of cross-shareholdings and the "main bank" system. Corporate restructuring has taken place, in many cases with companies reducing pension under-funding and banks disposal of many low-yield assets. Recent changes to accounting standards and growth in M&A activity have exacerbated the shortage of accounting professionals.

¶79. The Accounting Standards Board of Japan (ASBJ) and the International Accounting Standards Board (IASB) began discussions on the convergence of Japanese both accounting standards and IFRS practices in March 2005 and, in March 2006, further agreed to accelerate the process of convergence. The ASBJ embarked on similar discussions with the U.S. Financial Accounting Standards Board in May 2006. In December 2009, the FSA issued an order allowing companies to submit their financial statements based on international accounting standards. This order prepares the legal groundwork for a complete switch to IFRS in the future, but no decision has been made on the mandatory introduction of IFRS. Previously, the FSA accepted only Japanese or U.S. standards for consolidated accounting.

¶80. 2009 saw calls for greater disclosure of proxy voting. The above-mentioned Financial System Council report issued in June urged the government to consider introducing legislation similar to the American ERISA law that would spell out the fiduciary duties of pension fund managers to exercise their proxy voting rights on behalf of pension beneficiaries. The report called upon the investment industry to establish rules or other means to require

institutional fund managers and other large-scale investors who invest on behalf of retail investors to disclose how they exercise their proxy votes.

¶81. Taxation and M&A: Japan's standard tax rate for capital gains is 20 percent. However, under special policy measures intended to stimulate capital markets, Japan applies a special 10 percent capital gains tax rate on the proceeds of sales of listed stocks through 2010 for capital gains of less than JPY 5 million and for dividends on listed shares of less than JPY 1 million. The temporary cut in the tax rate from 20 percent to 10 percent on capital gains from listed share sales and dividend income expires at the end of December 2011; however, a new tax-free program has been proposed to encourage individual investors to invest in stocks. Under the new program, to be effective from January 2012, combined annual capital gains and annual dividend income of up to JPY 1 million will be exempted from income tax during a three-year period (2012-2014). Under a series of special measures Japan adopted to promote venture businesses, if the founding shareholder of a qualified company sells shares in the company a ten percent capital gains tax rate will apply if the sale is made prior to public listing in an M&A transaction and, from 2008, a ten percent rate will apply to shares sold by the founding shareholder within three years of listing.

¶82. Bankruptcy Laws: An insolvent company in Japan can face liquidation under the Bankruptcy Act or take one of four roads to reorganization: the Civil Rehabilitation Law; the Corporate Reorganization Law; corporate reorganization under the Commercial Code; or an out-of-court creditor agreement.

¶83. Japan overhauled its bankruptcy law governing small and medium size firm bankruptcies by enacting the Civil Rehabilitation Law in ¶2000. The law focuses on corporate restructuring in contrast to liquidation, provides stronger protection of debtor assets prior to the start of restructuring procedures, eases requirements for initiating restructuring procedures, simplifies and rationalizes procedures for the examination and determination of liabilities, and improves procedures for approval of rehabilitation plans. Japan's Corporate Reorganization Law, generally used by large companies, was similarly revised in 2003. Amendments made corporate reorganization for large companies more cost-efficient, speedy, flexible and available at an earlier stage. By removing many institutional barriers to the restructuring process, the new bankruptcy regime accelerated the corporate restructuring process in Japan.

¶84. Previously, most corporate bankruptcies in Japan were handled through out-of-court creditor agreements because court procedures were lengthy and costly. The fact that bankruptcy trustees had limited powers to oversee restructuring meant most judicial bankruptcies ended in liquidation, often at distress prices. Beginning in 2001, a group of Japanese bankruptcy experts published a set of private rehabilitation guidelines, modeled after the UK-based INSOL guidelines, for out-of-court corporate rehabilitation in Japan. Out-of-court settlements in Japan tend to save time and expense, but can sometimes lack transparency and fairness. In practice, because 100 percent creditor consensus is required for out-of-court settlements and the court can sanction a reorganization plan with only a majority of creditors' approval, the last stage of an out-of-court workout is often a request for a judicial seal of approval.

¶85. Credit Markets: Domestic and foreign investors have free access to a variety of credit instruments at market rates. Most foreign firms obtain short-term credit from Japanese commercial banks or one of the many foreign banks operating in Japan. Medium-term loans are

available from commercial banks or from trust banks and life insurance companies. Large foreign firms tend to use foreign sources for long-term financial needs.

A.10. COMPETITION FROM STATE-OWNED ENTERPRISES (SOEs)

¶86. Japan has privatized most former state-owned enterprises. The privatization of the financial companies of the Japan Post group, including Japan Post Bank and Japan Post Insurance, however, remains incomplete. After assuming power in September 2009, the DPJ-led government decided to delay indefinitely the stock sale of these companies. The U.S. Government has continued to raise concerns about the preferential treatment that Japan Post entities receive

compared to private sector competitors and the impact of these advantages on the ability of private companies to compete on a level playing field.

¶87. Japan does not have any sovereign wealth fund (SWF).

A.11. CORPORATE SOCIAL RESPONSIBILITY (CSR)

¶88. Awareness of corporate social responsibility among both producers and consumers in Japan is high and growing, and foreign and local enterprises generally follow accepted CSR principles. Business organizations also actively promote CSR.

A.12. POLITICAL VIOLENCE

¶89. Political violence is rare in Japan. Acts of political violence involving U.S. business interests are virtually unknown.

A.13. CORRUPTION

¶90. Japan's penal code covers crimes of official corruption. An individual convicted under these statutes is, depending on the nature of the crime, subject to prison sentences up to seven years and possible fines up to JPY 2.5 million (for the offering party) or mandatory confiscation of the monetary equivalent of the bribe (for the recipient). With respect to corporate officers who accept bribes, Japanese law also provides for company directors to be subject to fines and/or imprisonment, and some judgments have been rendered against company directors.

¶91. Although the direct exchange of cash for favors from government officials in Japan is extremely rare, some have described the situation in Japan as "institutionalized corruption." The web of close relationships between Japanese companies, politicians, government organizations, and universities has been said to foster an inwardly-cooperative business climate that is conducive to the awarding of contracts, positions, etc. within a tight circle of local players. This phenomenon manifests itself most frequently and most seriously in Japan through the rigging of bids on government public works projects.

¶92. Japanese authorities have acknowledged the problem of bid-rigging and have taken steps to address it. Building on the longstanding laws on bribery of public officials and misuse of public funds, the 2006 amendments to the 2003 Bid-Rigging Prevention Act, now called the Act on Elimination and Prevention of Involvement in Bid-Rigging, aimed specifically to eliminate official collusion in bid rigging. The law authorizes the Japan Fair Trade Commission (JFTC) to demand central and local government commissioning agencies take corrective measures to prevent continued complicity of officials in bid-rigging activities, and to report such measures to the JFTC. The Act also contains provisions concerning disciplinary action against officials participating in bid rigging and compensation for overcharges when the officials caused damage to the government due to willful or grave negligence. The act prescribes possible penalties of imprisonment for up to five years and fines of up to JPY 2.5 million. Nevertheless, questions remain as to whether the Act's disciplinary provisions are strong enough to ensure officials involved in illegal bid-rigging are held accountable.

¶93. Complicating efforts to combat bid rigging is the phenomenon

known as amakudari whereby government officials retire into top positions in Japanese companies, usually in industries that they once regulated. Amakudari employees are particularly common in the financial, construction, transportation, and pharmaceutical industries, among Japan's most heavily regulated industries. A 2007 law aimed at limiting involvement of individual ministries in finding post-retirement employment for its officials and more transparent administrative procedures may somewhat ameliorate the situation.

¶94. Japan has ratified the OECD Anti-Bribery Convention, which bans bribing foreign government officials. The OECD has identified deficiencies in Japan's implementing legislation, some of which the Japanese Government has taken steps to rectify. In 2004, Japan amended its Unfair Competition Prevention Law to extend national jurisdiction to cover the crime of bribery and in 2006 made changes to the Corporation Tax Law and the Income Tax Law expressly to deny the tax deductibility of bribes to foreign public officials.

A.14. BILATERAL INVESTMENT AGREEMENTS

¶95. The 1952 U.S.-Japan Treaty of Friendship, Commerce, and Navigation gives national treatment and most favored nation treatment to U.S. investments in Japan. As of December 2009, Japan has concluded or signed bilateral investment treaties (BITs) with fifteen trading partners, including Egypt, Sri Lanka, China, Hong Kong SAR, Turkey, Pakistan, Bangladesh, Russia, Mongolia, Vietnam, the Republic of Korea, Cambodia, Laos, Uzbekistan, and Peru. The Japanese Government is currently negotiating bilateral BITs with the Kingdom of Saudi Arabia and Colombia, as well as a trilateral agreement with China and the Republic of Korea. The government is also preparing to negotiate BITs with other countries abundant in natural resources, particularly Qatar and Kazakhstan.

¶96. Japan has economic partnership agreements (an EPA is analogous to a free trade agreement) containing investment chapters in force with Singapore, Mexico, Malaysia, Chile, Thailand, Indonesia, Brunei, the Philippines, Vietnam, and Switzerland, as well as a multilateral EPA with all ten members of the Association of Southeast Asian Nations (ASEAN).

¶97. U.S.-Japan Investment Initiative: Discussions as part of the U.S.-Japan Investment Initiative under the Economic Partnership for Growth, established by President Bush and Prime Minister Koizumi in June 2001, have addressed U.S. Government concerns about barriers to foreign investment in Japan. The Initiative's Investment Working Group has held semi-annual sessions to discuss policy measures that could improve the investment climate in both countries. The group's work has also included vigorous public outreach to increase receptivity to FDI. In 2009, its annual investment promotion seminar was held in Yokohama, alongside the Green Device 2009 trade show; it focused particularly on the role of venture capital in fostering economic growth and the development of new industries.

A.15. OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

¶98. U.S. OPIC insurance and finance programs are not available in Japan. Japan is a member of the Multilateral Investment Guarantee Agency (MIGA). Japan's capital subscription to the organization is the second largest, after the United States.

A.16. LABOR

¶99. Changing demographic patterns, macroeconomic trends, and regulatory reforms are gradually affecting traditional Japanese employment practices. Foreign investors seeking to hire highly qualified workers in Japan should benefit from many of these changes.

¶100. Throughout most of the post-war period, Japanese employment practices -- most notably in the nation's large, internationally competitive firms -- rested on three pillars: lifetime employment, seniority-based wages, and enterprise unions. Today, all three are undergoing rapid transformation. Demographic pressures -- fewer

young workers and a rapidly aging labor force and the subsequent structural changes in the Japanese economy -- are forcing many firms to reduce sharply lifetime employment guarantees and seniority-based wages in favor of merit-based pay scales and limited-term contracts. Although labor unions play a role in the annual determination of wage scales throughout the economy, that role has been shrinking. As in the United States, trade union membership as a portion of the labor force has been declining for decades, but the number of part-time workers who are union members has increased in recent years as a result of strengthened organizing efforts by some labor unions. With the formation of the DPJ-led government in September 2009, labor unions found the Japanese government more sympathetic than before to their concerns.

¶101. Investors should be aware of Japan's high wage structure. Growth in average wages has been slow, even in the midst of a return to economic growth, a situation that largely reflects the shift to increased use of non-regular employees and the hiring of younger workers to replace older, higher-wage workers who have begun to retire.

¶102. Traditionally, Japanese workers were classified as either "regular" or "other" employees. This system, to a considerable

degree, remains in place. Companies recruit "regular" employees directly from schools or universities and provide an employment contract with no fixed duration. In contrast, firms hire "other" employees on fixed duration contracts, which generally cannot exceed one year but may be renewed several times. Since the mid-1990s, companies have increasingly used part-time workers, interns, and temporary workers to fill short-term labor requirements. According to a 2007 MHLW survey, non-regular workers accounted for 71.8 percent of all employees aged 15-19 years and 43.2 percent of all employees age 20-24. There remains deep concern among Japanese government policy makers that the number of non-regular employees aged 25-34 remains stubbornly high and the ability of such workers to find permanent employment will decline as they get older. These non-regular employees and temporary workers have borne the brunt of corporate adjustment to the worldwide recession since September ¶2008. In 2009 employment of such non-regular workers generally continued on a downward trend, with the largest drop being 380,000 in the quarter ended September 2009, according to the Ministry of Internal Affairs and Communications (MIC).

¶103. Defined contribution pension plans have been available in Japan since 2001. Such plans should promote greater labor mobility in the future, as workers are able to carry pension savings with them to new jobs. However, only about three percent of workers are currently covered by such plans and the ceiling on contributions is too low to realize the full potential of the program. In December 2008, the government submitted legislation to allow employees to make individual contributions to their pension plans, but the bill was not enacted by the Diet. In July 2009, the government announced it would increase tax deductible employer contribution limits, effective January 2010, the second increase since 2001.

A.17. FOREIGN-TRADE ZONES/FREE PORTS

¶104. Japan no longer has free-trade zones or free ports. Customs authorities allow the bonding of warehousing and processing facilities adjacent to ports on a case-by-case basis.

A.18. FOREIGN DIRECT INVESTMENT STATISTICS

¶105. Between 1998 and December 2008, Japan's stock of FDI increased from JPY 3.0 trillion to JPY 18.5 trillion. In the same period investment inflows were generally strong. All data in the tables below are current as of December 2008. Negative figures indicate net outflow.

¶106. TABLE 1A: NET FDI INFLOWS

Unit: billion dollars; balance-of-payment basis

JFY1999 JFY2000 JFY2001 JFY2002 JFY2003

12.31	8.23	6.19	9.09	6.24

JFY2004	JFY2005	JFY2006	JFY2007	JFY2008
7.81	3.22	-6.78	22.18	24.55

¶107. TABLE 1B: RATIO OF INWARD TO OUTWARD FDI
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balance-of-payment basis

1999	2000	2001	2002	2003
1:1.8	1:3.8	1:6.2	1:3.5	1:4.6

2004	2005	2006	2007	2008
1:4	1:14.1	1:9.4	1:3.3	1:5.3

Note: Figures were first calculated in nominal Japanese yen and converted into U.S. dollars using Bank of Japan average annual exchange rates.

¶108. TABLE 2: FDI IN JAPAN, BY COUNTRY

Unit: million dollars
Net and flow; balance-of-payment basis

- Year end	2004	2005	2006	2007	2008
¶N. America	2,294	-636	-2,666	12,706	12,005
U.S.	1,407	308	105	13,270	11,792
Canada	890	-944	-2,771	-561	213

Asia	994	1,565	-852	1,605	3,381
China	-9	11	12	15	37
Hong Kong	295	960	2,136	47	257
Taiwan	74	-26	110	36	66
Korea	251	31	108	221	279
Singapore	389	598	1,062	1,282	2,716
Thailand	-1	-6	1	1	6
India	0	1	-1	3	1
¶W. Europe	5,623	1,123	-3,938	4,785	4,861
Germany	1,170	237	-542	-813	1,185
U.K.	-310	132	1,807	540	-1,289
France	1,049	-78	274	504	177
Nethlnds.	3,611	2,541	-7,583	-390	2,692
Belgium	-417	-1,188	884	148	-2,040
Luxembourg	260	363	-12	484	477
Switz.	108	-748	317	1,162	1,873
¶E. Europe					
Russia	-1	0	-4	1	5
¶L. Amer.	-1,114	1,278	566	2,831	4,020
Mexico	0	0	0	0	0
Brazil	20	1	0	0	0
Cayman	752	1,069	-82	1,480	3,592
Oceania	-4	-114	36	215	258
Middle East	3	9	-1	3	-2
Africa	-13	1	63	33	21
TOTAL	7,808	3,223	-6,789	22,181	24,550

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¶109. TABLE 3: FDI INWARD STOCK BY COUNTRY/REGION
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Unit: million dollars

- Year end	2004	2005	2006	2007	2008
¶N. America	45,919	47,729	44,273	45,947	75,680
U.S.	40,872	43,888	41,989	44,795	74,344
Canada	5,049	3,841	2,284	1,152	1,336
Asia	5,889	6,702	8,247	9,390	16,769
China	90	102	100	125	225
Hong Kong	2,136	2,612	1,928	2,301	3,203
Taiwan	1,605	1,391	1,475	1,534	1,892
Korea	537	313	423	694	1,235
Singapore	1,380	2,159	4,205	4,620	10,047
Thailand	48	42	42	44	61
India	10	10	9	13	18
¶W. Europe	41,779	38,101	42,367	62,341	86,915
Germany	3,915	5,904	4,582	3,811	6,592

U.K.	2,310	3,033	4,983	5,962	6,750
France	13,693	10,777	11,549	12,776	16,233
Nethlnds.	14,210	11,654	12,175	26,025	36,510
Belgium	613	474	1,901	1,947	1,362
Luxembourg	1,650	1,632	1,635	2,267	4,000
Switz.	3,172	2,106	3,536	3,942	7,150
¶E. Europe					
Russia	52	47	47	46	63
¶L. Amer.	3,004	8,218	12,123	15,227	23,576
Mexico	5	4	4	5	6
Brazil	33	31	30	32	40
Cayman Is.	2,666	5,599	8,400	10,469	17,363
Oceania	637	478	492	779	1,075
Middle East	9	14	14	20	29
Africa	-12	1	63	99	275
TOTAL	97,305	101,322	107,663	133,888	204,433

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¶110. TABLE 4: FDI IN JAPAN, BY INDUSTRY

Unit: million dollars
Net flow reporting basis for JFY2004
Balance of payment basis for CY 2005-08

-	JFY2004	CY2005	CY2006	CY2007	CY2008
Manufacturing (total)	952	-2,191	254	1,381	2.261
Machinery	402	--	--	--	--
General mach.	--	164	-24	-22	721
Electric	--	-1,195	32	-391	642
Trans. Equip.	--	32	-1,408	331	-55
Precision mach.	--	-59	598	20	113
Chemicals	199	--	--	--	--

Chemicals /Pharma	--	-1,168	1,538	-1,010	245
Metals	7	--	--	--	--
Iron, non-ferrous	--	-34	60	230	124
Rubber leather	--	1	35	35	4
Petroleum	166	-44	37	935	300
Textiles	83	188	58	109	-3
Food	32	-211	-717	365	-86
Glass & ceramics	--	103	193	663	212
Others	63	--	--	--	--
Non-manufacturing (total)	36,507	5,414	-7,043	20,800	22,289
Farming/forestry	--	-1	11	41	1
Fish/marine prod.	--	0	-39	-33	--
Mining	--	0	1	0	0
Finance/Insur.	27,693	645	2,265	17,661	19,823
Trading	999	--	--	--	--
Wholesale/retail	--	1,157	-387	1,660	1,160
Services	1,263	178	122	295	473
Real estate	213	15	72	1,413	581
Telecom	4,338	--	--	--	--
Communication	--	912	-9,715	-633	-1,028
Transport	1,947	2,108	28	-288	43
Construction	31	41	37	19	-60
Others	24	--	--	--	--
TOTAL	36,507	3,223	-6,789	22,181	24,550

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¶111. TABLE 5: JAPANESE FDI OVERSEAS, BY COUNTRY/REGION

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Unit: million dollars
Net and flow; balance-of-payment basis

- Year end	2004	2005	2006	2007	2008
¶N. America	7,601	13,169	10,188	17,385	46,046
U.S.	7,559	12,126	9,297	15,672	44,674
Canada	42	1,042	892	1,713	1,372
Asia	10,531	16,188	17,167	19,388	23,348
China	5,863	6,575	6,169	6,218	6,496

Hong Kong	491	1,782	1,509	1,131	1,301
Taiwan	473	828	491	1,373	1,082
ROK	771	1,736	1,517	1,302	2,369
Singapore	138	557	375	2,233	1,089
Thailand	1,867	2,125	1,984	2,608	2,016
Indonesia	498	1,185	744	1,030	731
Malaysia	163	524	2,941	325	591
Philippines	6	442	369	1,045	705
India	139	266	512	1,506	5,551
Europe	7,097	7,509	18,029	20,456	22,418
Germany	645	270	1,128	880	3,905
U.K.	1,649	2,903	7,271	3,026	6,744
France	25	541	842	479	1,703
Nethlnds.	3,337	3,315	8,497	12,440	6,514
Sweden	-70	82	416	254	570
Spain	183	363	136	10	210
¶L. America	3,120	6,402	2,547	9,482	29,623
Mexico	191	629	-2,603	501	315
Brazil	-65	953	1,423	1,244	5,371
Cayman Is.	2,726	3,915	2,814	5,838	22,550
Oceania	1,856	943	723	4,204	6,060
Australia	1,651	640	466	4,140	5,232
Middle East	-63	542	242	958	1,138
UAE	-19	19	-56	60	194
Saudi Arabia	-38	494	254	746	892
Africa	378	25	899	1,101	1,518
South Africa	124	-17	466	82	648
TOTAL	30,962	45,461	50,165	73,483	130,801

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¶112. TABLE 6: JAPANESE FDI OVERSEAS, BY INDUSTRY

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Unit: million dollars
Net and flow; reporting basis for JFY2004
Balance of payment basis for CY 2005-08

-	JFY2004	CY2005	CY2006	CY2007	CY2008
Manufacturing					

-	JFY2004	CY2005	CY2006	CY2007	CY2008
(total)	13,750	26,146	34,513	39,515	45,268
Chemicals /Pharma	3,530	3,363	4,413	3,744	11,647
Trans. Equip.	3,601	--	--	--	--
Food	428	1,088	1,685	1,025	12,776
Metal	1,078	1,391	--	--	--
Iron, non-ferr.	--	1,331	1,795	2,202	3,152
General mach.	1,108	1,296	1,663	2,642	--
Electric mach.	--	4,377	7,041	4,691	5,675
Transport equip.	--	8,611	8,597	8,671	10,924
Precision mach.	--	1,419	1,420	1,293	953
Rubber/leather	--	831	1,107	835	771
Lumber & pulp	119	826	420	745	734
Textiles	172	416	180	371	716
Petroleum	--	531	2,921	-280	652
Glass/ceramics	--	258	2,759	837	1,417
Non-manufacturing					
(total)	21,010	19,315	15,652	33,968	85,533
Finance /Insurance	11,613	9,227	5,562	19,458	52,243
Trade	1,884	--	--	--	--
Wholesl/retail	--	4,623	5,483	4,792	13,319
Real estate	370	-851	-811	162	162
Services	2,360	1,086	188	1,406	2 721
Transport	1,286	824	1,507	2,133	2,283
Mining	2,054	1,372	1,577	4,053	10,518
Construction	280	148	-64	490	389
Farm/forest	38	23	42	93	59
Fisheries	24	-44	28	64	118
Communications	--	1,712	-3,368	-331	1,675
TOTAL	34,548	45,461	50,165	73,483	130,801

¶113. TABLE 7: FDI INFLOW RELATIVE TO GDP

Balance-of-payment basis

(a) GDP/Nom (trillion yen)

2004	2005	2006	2007	2008
498.3	501.7	508.9	515.7	494.2

(b) FDI Inflow (trillion yen)

2004	2005	2006	2007	2008
0.85	0.31	-0.76	2.65	2.52

(b/a) (percent)

2004	2005	2006	2007	2008
0.17	0.06	-0.15	0.51	0.51

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